

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case I
No. 17544 ME-1015
Decision No. 12688

Mr. John P. McCrory, General Counsel, Wisconsin Education Association Council, appearing for the Petitioner.
Mr. John W. Davison, Attorney at Law, appearing for the Municipal Employer.

River Falls Education Association having petitioned the Wisconsin Employment Relations Commission to conduct an election, pursuant to Section 111.70 of the Wisconsin Statutes, among certain employes of Joint School District No. 1, City of River Falls, et. al.; and a hearing on such petition having been held at River Falls, Wisconsin, on February 18, 1974, Marvin L. Schurke, Hearing Officer, being present; and the Commission having considered the evidence and arguments and being satisfied that a question has arisen concerning representation for certain employes of said Municipal Employer;


That an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within thirty (30) days from the date of this Direction, for the purpose of determining whether a majority of the regular part-time teaching employees in the employ of Joint School District No. 1, City of River Falls, et. al. on the date of this Direction, except such employees as may prior to the election quit their employment or be discharged for cause, desire to accrete to the unit consisting of all full-time employees of said Municipal Employer engaged in teaching, including classroom teachers and librarians, but excluding nurses, guidance counselors, principals, supervisors and other administrative personnel, presently represented by the River Falls

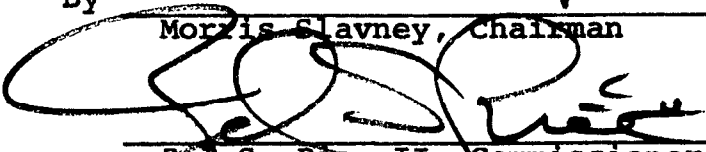
Education Association for the purposes of collective bargaining within the meaning of Section 111.70(1)(d) of the Municipal Employment Relations Act.^{1/}

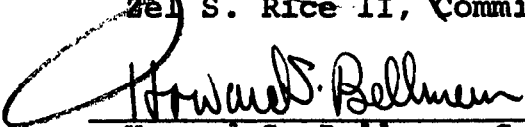
Given under our hands and seal at the City of Madison, Wisconsin, this *9th* day of May, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner


Howard S. Bellman, Commissioner

^{1/} In the event the regular part-time employees vote in favor of accretion to the existing unit, the resulting unit description will be: "All regular full time and regular part time teachers employed by Joint School District No. 1, City of River Falls, et. al., excluding nurses, guidance counselors, principals, supervisors and other administrative personnel."

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

The parties to this proceeding are parties to a collective bargaining agreement entered into on July 25, 1973 and effective for the 1973-1974 and 1974-1975 school years. Article II of that agreement provides as follows:

"The Board recognizes the Association as the exclusive bargaining representative on salaries, hours and conditions of employment for all full-time employees of the District engaged in teaching including classroom teachers and librarians, but excludes nurses, guidance counselors, principals, supervisors and other administrative personnel."

In the petition filed on January 10, 1974 to initiate the instant proceeding, the Association describes a claimed appropriate unit of "All full-time and regular part-time employees . . ." and requests an election to determine whether regular part-time teachers employed by the District desire to accrete to the existing unit. The District has employed part-time teachers since at least 1967, and presently employs 11 regular part-time teachers. The number of part-time teachers has varied from year to year, and has been as high as 15. Part-time teachers are employed for varying proportions of a full teaching load, and the proportion of employment of individual part-time teachers has varied from year to year, depending on the District's demand for their services.

The regular part-time teachers are all certified by the Department of Public Instruction in the areas in which they teach. Like the regular full-time teachers employed in the District, the regular part-time teachers work a 190 day school year, participate in inservice programs, participate in parent-teacher conferences, and submit proposed budgets and plans for their teaching programs for subsequent years. The salaries and sick leave benefits for the part-time teachers are established pro rata to the salary schedule and sick leave benefits negotiated between the parties for full-time teachers. Part-time teachers are paid at the same times and in the same manner as are full-time teachers. Hospital-Medical insurance benefits similar to those provided in the collective bargaining agreement for full-time teachers are provided to the part-time teachers, but the part-time teachers have not, heretofore, been provided the life insurance coverage provided to full-time teachers. Part-time teachers are supervised and evaluated in the same manner as are full-time teachers. At the elementary level, part-time teachers are generally used in specialty areas such as art and music, except in Kindergarten, where a part-time teacher is assigned to a regular one-half day section. At the secondary level, part-time teachers are assigned to teach "regular disciplines". While the part-time teachers are generally assigned to "flesh out" programs or to work in pilot programs, all of the part-time teachers work in direct contact with students in the classroom setting. Part-time teachers have, in some cases, less involvement with faculty meetings and extracurricular activities than do full-time teachers, but part-time teachers have served as coaches for certain extracurricular activities. None of the regular part-time teachers involved in this case act as substitute teachers as part of their "regular" duties, although they may work for the District as substitutes above and beyond their regular part-time assignment.

Among the eleven present part-time teachers, six are in their first year of part-time employment. The remaining part-time teachers have been continuously employed in the District as part-time teachers for two to five years. From time to time, employees initially hired as part-time teachers have subsequently been hired as full-time teachers, five such cases occurring during the present school year. Others, including three of the present part-time teachers, were formerly full-time teachers in the District who, for various reasons, accepted employment on a part-time basis. Prior to the present school year, the part-time teachers were issued individual teaching contracts similar to those issued to full-time teachers. During the present school year the District changed its policy with respect to individual teaching contracts issued to regular part-time teachers, and began issuing letters, in the following form:

[Letterhead of River Falls Public Schools]

"July 31, 1973

[Name and address of regular
part-time teacher]

Dear [Name of regular part-time teacher]:

This letter is intended to serve as the agreement that exists between yourself and the Board of Education of the River Falls School District concerning your part-time employment for the 1973-74 school year. The following provisions will apply unless mutually agreeable changes are executed:

- 1) Beginning date of employment -- August 23, 1973
- 2) Terminal date of employment -- June 3, 1974
- 3) Salary to be at sixty percent of \$9,447 or \$5,668
-- 7th B.S. (6)
- 4) Six days of sick leave for the year
- 5) Any other benefits that may accrue to you as a
result of Board action

It should be understood that this agreement does not entitle you to the non-renewal privilege of a full-time teacher nor some of the benefits that accrue to full-time teachers other than those listed above unless by mutual agreement between yourself and the Board of Education.

If these terms are agreeable to you, please sign the original copy of this letter and return it to this office. The carbon should be kept for your records.

Sincerely,

Paul W. Proescholdt /s/

Paul W. Proescholdt
Superintendent of Schools

PWP/dcb

RIVER FALLS BOARD OF EDUCATION

John W. Bradley /s/
John W. Bradley, President

Teacher

George M. Kremer /s/
George M. Kremer, Clerk

Date"

All of the present regular part-time teachers signed such documents and commenced their employment with the District for the current year knowing that they had assurances of employment for the current year only. However, the District has not had, and does not now have, any policy prohibiting the reemployment of regular part-time teachers for subsequent years, and several of the present regular part-time teachers have had discussions with Administrative personnel of the District concerning planning for the 1974-1975 school year.

Position of the District

The District states that it has been, at all times, interested in providing a modern, up-to-date and flexible curriculum, and that the employment of part-time teachers has been an essential ingredient in obtaining that goal. The part-time employment practice is also regarded as a cost saving to the District because it eliminates the necessity of employing a full-time teacher when less than full-time teaching service is needed. The District would draw a distinction between "permanent part time" and "temporary part time" employees, and would classify its regular part-time teachers in the latter category. Relying on the decisions of this Commission in Jt. School Dist. No. 1, City of Ashland (7090-A) 5/65 and Jt. School Dist. No. 10, City of Appleton (7151) 5/65, and pointing to the provisions of their individual employment contracts which set a specific "terminal date of employment" the District contends that its regular part-time teachers have no anticipated future employment, and contends that they should not be included in any bargaining unit. It is further the contention of the District that the petition initiating the instant matter was not timely filed in light of the previous negotiations between the parties and the execution of a collective bargaining agreement in which recognition was limited to full-time employees. The District also asserts that problems would arise in attempting to fit the part-time teachers into the existing collective bargaining agreement, should an election be directed and the employees vote to accrete to the existing unit.

Position of the Association

The Association relies on the decision of this Commission in Waukesha Vocational District No. 8 (11076) 6/72, where regular part-time teachers were included in a single unit with full-time teachers, regardless of the number of hours taught, on the basis of their com-

that the part-time teachers hold positions which are temporary in nature. The Association would distinguish the Ashland and Appleton cases as relating to individual eligibility for participation in an election, rather than to the determination concerning the appropriate bargaining unit. The Association contends that there can be no timeliness problem in a case such as this, which involves an accretion to an existing bargaining unit rather than an attempt to disturb a collective bargaining relationship.

Discussion

The definition of "municipal employee" set forth in Section 111.70 (1)(b) of the Municipal Employment Relations Act (MERA) does not exclude temporary or part-time employees, and the Commission has previously determined that temporary, casual, seasonal and occasional employees of a Municipal Employer, as well as regular employees, are considered to be employees within the meaning of the Statute. See: Wauwatosa Board of Vocational and Adult Education (8158) 8/67.

Temporary employees have been excluded from bargaining units of Municipal Employees in several cases where the temporary nature of their employment is found to deprive them of a community of interest with regular employees,^{2/} and the lack of an expectancy of continued employment is one of the factors which has been considered in making such determinations. The argument of the District that its regular part-time employees are "temporary" is based primarily on the existence of the "terminal date of employment" clause in the individual employment contracts signed by the regular part-time teachers, and on the evidence that these employees entered their present employment with the knowledge that they had no assurance of employment beyond the present academic year. The situation of full-time teachers employed by the District is similar, at least in that their individual employment contracts are issued for a single year only and contain a terminal date of employment. The full-time teachers also entered into their employment without a guarantee of employment beyond the present academic year. The District acknowledges this, but notes that the full-time teachers have the procedural protections of the "continuing contract" provisions of Chapter 118, Wisconsin Statutes, under which the District would be required to take certain affirmative action in order to terminate their employment. The Commission recognizes that public school teachers generally have more formalized arrangements concerning their term of employment than do other types of employees. Most employment relationships are informally established and are terminable at the will of either party, but customarily continue from the date of hiring until one party or the other takes affirmative action to terminate the relationship. The "expectancy" of continued employment need not be embodied in an enforceable employment contract in order for the employee to have a community of interest with other employees of the same employer. In this case, we find that the different types of employment contracts do not, in and of themselves, warrant a conclusion that part-time teachers have a separate community of interest from full-time teachers. The many items of evidence indicating similarities between the employment of regular part-time and full-time teachers constitute the basis for the Commission's determination that all regularly employed teachers employed by the District have a single community of interest and should be included in a single bargaining

2/ LaCrosse Hospital (8341-C) 5/68; City of Middleton (10381) 7/71; Milwaukee County (11411) 11/72, aff'd Dane Co. Cir. Ct., 6/73; Pierce County (12316) 12/73.

unit. A single unit is also in keeping with the mandate of Section 111.70(4)(d)(2)(a) of MERA to avoid fragmentation of bargaining units. Since no question is raised herein concerning the majority status of the River Falls Education Association as the representative of the full-time employes, an election is directed among the part-time employes to determine whether a majority of those employes desire to be included in that bargaining unit.

The Ashland and Appleton cases relied upon by the District relate to the eligibility of individual employes, and do have a bearing in this case. Employes who, on the date of the election conducted pursuant to the accompanying Direction, know that they will not be returning to regular teaching employment in the District for the 1974-1975 academic year will not be eligible voters in that election. In those situations the terminable nature of their employment will have matured into an actual termination, thereby cutting off their expectation of continued employment and their community of interest with members of the bargaining unit.

The timeliness arguments advanced herein by the District are based on the fact that the parties had negotiations concerning the expansion of the unit (to include part-time teachers) prior to the execution of the present collective bargaining agreement. In essence, the District argues that the contract bars the Association's effort to have the unit expanded in this proceeding. The Commission has previously recognized the existence of a contract bar and has established timeliness rules for situations in which one labor organization seeks to unseat another labor organization as the representative in a bargaining unit of municipal employes.^{3/} However, such contract bar and timeliness rules have never been applied with regard to groups of employes who are not represented for the purposes of collective bargaining and who are not covered by a collective bargaining agreement at the time the petition is filed. In the instant case some labor organization other than the Petitioner herein could have filed a petition for an election among regular part-time teachers employed by the District, and the District's timeliness arguments here could not apply in such a situation. While the contract between the parties operated to preclude a "clarification", by which the Association sought an alteration of the unit without a vote among the affected employes, it cannot be held to bar an election among those employes.

In the event that the regular part-time employes vote in favor of accretion to the existing unit, they will not automatically be covered by the provisions of the existing collective bargaining agreement covering full-time teachers. The District would appear to misinterpret the impact of the inclusion of regular part-time employes in the bargaining unit, insofar as "continuing contract" rights are concerned. Changes in the employment security arrangements for these employes might be a subject for collective bargaining between the parties, but would not flow directly from any certification of representatives issued by this Commission. Amendments to the existing collective bargaining agreement or a separate interim agreement may be negotiated between the parties to cover the wages, hours and conditions of employment of the regular part-time teachers during the remaining life of the existing agreement covering the full-time employes. Coverage of both the regular full-time and regular part-

3/ See Wauwatosa Board of Education (8300-A) 2/68, and cases following therefrom, digested at Sec. M321.3, Digest of Decisions of WERC involving Section 111.70, Wisconsin Statutes, October 1, 1972 edition.


time employees in a single unit-wide agreement would presumably commence with the next agreement to be negotiated as a successor to the agreement presently in effect.

Dated at Madison, Wisconsin, this 9th day of May, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Mel S. Rice II, Commissioner


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